

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 17-17361
)	
RICHARD M. OSBORNE, SR.,)	Chapter 7
)	
Debtor.)	Judge Arthur I. Harris

TRUSTEE’S OBJECTION TO DEBTOR’S CLAIMED EXEMPTIONS

Kari B. Coniglio, Chapter 7 Trustee for the Chapter 7 bankruptcy estate of Richard M. Osborne, Sr. (the “Debtor”), hereby objects to the following claimed exemptions:

- (1) Debtor’s claimed exemption under Section 2329.66(A)(1) of the Ohio Revised Code in real property located at 7020 Williams Road, Concord, Ohio;¹
- (2) Debtor’s claimed exemptions under Sections 2329.66(A)(13) and (17) of the Ohio Revised Code and Section 1673 of Title 15 of the United States Code in the “Monthly Fee a co executor of Jerome T Osborne Estate”; and
- (3) Debtor’s claimed exemptions under Sections 2329.66(A)(13) and (17) of the Ohio Revised Code and Section 1673 of Title 15 of the United States Code in the “Monthly Fee for Real Estate management for Jerome T. Osbonre [sic] Estate (paid to 5850 Woodside LLC)”.

“ ‘Exemptions are determined on the date a petition is filed.’ ” *In re Aubiel*, 534 B.R. 300, 303-04 (B.A.P. 6th Cir. 2015) (*quoting In re Wengerd*, 453 B.R. 243, 252 (B.A.P. 6th Cir. 2011)). In this case, the Debtor has testified on multiple occasions that between the December 17, 2017 petition date and (at the earliest) August 16, 2019, the Debtor resided in his property on Markell Road, and not at the property located at 7020 Williams Road. Accordingly, the Debtor is not entitled to claim a homestead exemption in the 7020 Williams Road property.

Debtor’s exemptions in both his monthly fees for acting as a co-executor of the Jerome T. Osborne Estate and the monthly fees paid to 5850 Woodside LLC are each inapplicable because

¹ This Court previously sustained First National Bank of Pennsylvania’s Objection to Debtor’s Claim of Homestead Exemption [Doc. 219]; however, given the Debtor’s amendments to Schedule C after this Court’s entry, the Trustee files this Objection in an abundance of caution.

the payments to the debtor are not in exchange for work or labor performed by the Debtor. *See In re Larkins*, No. 11-18295, 2012 Bankr. LEXIS 1762, at *5 (Bankr. N.D. Ohio Apr. 19, 2012) (defining “personal earnings” as “money or any other consideration or thing of value, that is paid or due to a person in exchange for work, labor, or personal services provided by the person to an employer” (citations omitted)); *In re Lehman*, No. 18-61415-rk, 2018 Bankr. LEXIS 3389, at *3–4 (Bankr. N.D. Ohio Nov. 2, 2018) (similarly defining “personal earnings,” and holding real estate commissions do not constitute personal earnings where party making payments was not required to withhold taxes). *Cf. WesBanco Bank, Inc. v. Ettayem*, Nos. 14AP-452, 14AP-455, 2015-Ohio-123, 2015 Ohio App. LEXIS 1207, at *8 (Ohio Ct. App. Mar. 31, 2015) (finding that lease payments owed to judgment debtor were not personal earnings and thus could be reached by judgment creditor through creditor’s bill).

Further, to the extent 5850 Woodside LLC, an entity in which the Debtor is the sole member, performs services for the Jerome T. Osborne Estate, subsequent distributions to the Debtor are distributions on account of his membership interests and not on account of labor or personal services actually performed by the Debtor.

WHEREFORE, Trustee hereby requests that this Court sustain this Objection and deny the Debtor’s application of any claimed exemption in the aforementioned assets of his estate, and order such other relief in favor of the Trustee as this Court deems just.

Dated: February 5, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Trustee's Objection to Debtor's Claimed Exemptions* was served via the Court's Electronic Case Filing System on February 5, 2020 on the following who are listed on the Court's Electronic Mail Notice List:

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